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9 IN RE MIDLAND CREDIT  
10 MANAGEMENT INC. TELEPHONE  
11 CONSUMER PROTECTION ACT  
LITIGATION,

CASE NO. 11md2286-MMA (MDD)

MEMBER CASE NOS:

15cv773-MMA (MDD)

15cv774-MMA (MDD)

15cv775-MMA (MDD)

15cv776-MMA (MDD)

15cv777-MMA (MDD)

15cv783-MMA (MDD)

15cv785-MMA (MDD)

**ORDER DENYING DEFENDANTS'  
MOTION FOR ORDER  
REQUIRING DAVID MACK TO  
CEASE FILING DUPLICATIVE  
LITIGATION OUTSIDE OF THE  
MDL**

[Doc. No. 228]

22  
23 Defendants Midland Credit Management, Inc., Midland Funding LLC, and  
24 Encore Capital Group, Inc. (collectively, "Defendants") have filed a motion seeking  
25 to stop Plaintiff David Mack ("Plaintiff") from filing Telephone Consumer Protection  
26 Act lawsuits against Defendants outside of this MDL, and to set a 30-day deadline for  
27 Plaintiff to file an amended complaint in this Court consolidating his multiple  
28 pending complaints. *See* Doc. No. 228. Plaintiff filed an opposition, to which

1 Defendants replied. *See* Doc. Nos. 237, 241. The Court found the matter suitable for  
2 determination on the papers without oral argument pursuant to Civil Local Rule  
3 7.1(d)(1). For the reasons set forth below, the Court **DENIES** Defendants' motion.

#### 4 **BACKGROUND**

5 This matter concerns various lawsuits filed by Plaintiff against Defendants,  
6 which have been transferred to this Court for coordinated or consolidated pretrial  
7 proceedings in MDL No. 2286, *In re: Midland Credit Management, Inc., Telephone*  
8 *Consumer Protection Act*. *See* Doc. No. 209 (Transfer Order re: Mack I-VII); Doc.  
9 No. 226 (Transfer Order re: Mack VIII-XIII).<sup>1</sup> According to Plaintiff, Defendants  
10 called him 113 times over a 90-day period beginning in November 2013, sometimes  
11 as many as 4 call per day, without Plaintiff's consent. Plaintiff has filed separate  
12 lawsuits against Defendants, so far 25 in total, based on distinct calls he alleges to  
13 have received in violation of the Telephone Consumer Protection Act ("TCPA"), 47  
14 U.S.C. § 227, *et seq.*; the Texas Business Commerce Code section 305.053; and the  
15 Fair Debt Collections Practices Act, 15 U.S.C. § 1692, *et seq.*

16 Although filed separately, Plaintiff's various actions have all followed a similar  
17 litigation pattern. Plaintiff files the action in in small claims court in Collin County,  
18 Texas. Defendants then remove the actions to federal court in the Eastern District of  
19 Texas, and subsequently move to transfer the actions into this MDL. In response,  
20 Plaintiff has moved to vacate the transfer order in each case. To date, the Judicial  
21 Panel on Multidistrict Litigation ("JPML") has denied Plaintiff's attempts to vacate  
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26 <sup>1</sup> There are currently Conditional Transfer Orders pending for another 12 lawsuits filed by Plaintiff  
27 Mack. Defendants request the Court take judicial notice of Plaintiff Mack's opposition to the  
28 Conditional Transfer Order No. 88. *See* Doc. No. 244, Exhibit A. The Court **GRANTS**  
Defendants' request and takes judicial notice of Plaintiff's filing of the notice of opposition to  
Conditional Transfer Order No. 88 pursuant to Federal Rule of Evidence 201.

1 two transfer orders, finding transfer of Plaintiff's actions to this MDL appropriate on  
2 the grounds that the actions share a common factual core. *See* Doc. Nos. 209, 226.<sup>2</sup>

3 Defendants presently take issue with the fact that Plaintiff has opted to file  
4 separate lawsuits for each individual phone call he claims to have received, asserting  
5 that "this continuous stream of frivolous motion practice is vexatious and a waste of  
6 the panel's time and resources." Defs.'s Mot. at 3. Defendants move for an order (1)  
7 enjoining Plaintiff Mack from filing TCPA lawsuits against Midland outside of this  
8 MDL; and (2) imposing a 30-day deadline for Plaintiff Mack to file an amended  
9 complaint in this Court consolidating his multiple pending complaints into a single  
10 complaint seeking relief for every call he alleges to have received.

### 11 DISCUSSION

12 Defendants asks this Court to enjoin Plaintiff from commencing new litigation  
13 in any other court outside this MDL, and insist that the Court has the authority to do  
14 so. In support of this argument, Defendants cite to § 9.6<sup>3</sup> of the Multidistrict  
15 Litigation Manual, which recognizes that courts have the power to enjoin litigants

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17 <sup>2</sup> "These actions share a common factual core with the actions already in MDL No. 2286—the  
18 allegation that Midland sought to collect a debt by contacting plaintiff on his cellular telephone  
19 using an automatic telephone dialing systems without prior consent. These actions thus involve  
20 similar factual inquiries and discovery about Midland's collection call policies and procedures, as  
21 well as its policies and procedures for obtaining and recording a consumer's consent to receive  
22 collection calls. Contrary to plaintiff's assertion, this commonality is apparent on the face of all the  
23 complaints." Doc. No. 209 (Mack I-VII); Doc. No. 226 (Mack VIII-XIII) ("Plaintiff's argument  
24 against transfer are essentially identical to those we rejected with respect to seven prior actions filed  
25 by plaintiff (Mack I-VII)").

26 <sup>3</sup> Section 9.6 read as follows:

27 The fact that the Panel has exercised jurisdiction over the case by ordering  
28 transfer does not have any impact on the power of the transferee court, other to vest  
it with jurisdiction over transferred actions. The transferee court's jurisdiction is no  
vaster than the transferor's jurisdiction over the transferred actions.

An important power of the courts that is particularly important to an MDL  
transferee judge is the power to enjoin litigants and their attorneys from commencing  
or prosecuting litigation in other forums. This power flows from the intersection of  
the Anti-Injunction Act, 28 U.S.C. § 2283, and the All Writs Act, 28 U.S.C. §  
1651(a). A power to enjoin attempts by litigants in MDL litigation to have other  
courts take jurisdiction over the dispute is recognized in a number of cases.

1 from commencing or litigating actions in other forums under the intersection of the  
2 All Writs Act, 28 U.S.C. § 1651(a) and Anti-Injunction Act, 28 U.S.C. § 2283.

3       The All Writs Act provides that: “The Supreme Court and all courts established  
4 by Act of Congress may issue all writs necessary or appropriate in aid of their  
5 respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C.  
6 § 1651(a). As the Ninth Circuit has recognized, “[t]hat is a broad, but not unlimited,  
7 grant of authority to federal courts, including the district court.” *Negrete v. Allianz*  
8 *Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1098–99 (9th Cir. 2008). The Anti-Injunction  
9 Act, in turn, provides that: “A court of the United States may not grant an injunction  
10 to stay proceedings in a State court except as expressly authorized by Act of  
11 Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its  
12 judgments.” 28 U.S.C. § 2283. The Supreme Court has explained that “[o]n its face  
13 the present [Anti-Injunction] Act is an absolute prohibition against enjoining state  
14 court proceedings, unless the injunction falls within one of three specifically defined  
15 exceptions.” *Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281,  
16 286 (1970); *see also Negrete*, 523 F.3d at 1100 (“At the outset, it is important to note  
17 that the Anti-Injunction Act restriction is based upon considerations of federalism  
18 and speaks to a question of high public policy. It is not a minor revetment to be  
19 easily overcome; it is a fortress which may only be penetrated through the portals that  
20 Congress has made available.”). Thus, when read together, a federal district court has  
21 the authority to “issue all writs necessary” but may not enjoin a state court proceeding  
22 unless one of the three enumerated exceptions applies. *See Negrete*, 523 F.3d at  
23 1100. This Court must therefore determine whether Defendants’ ground for  
24 enjoining Plaintiff Mack from commencing or litigating any cases outside this MDL  
25 fits within one of the three exceptions set forth above.

26       The Ninth Circuit has recognized that “the existence of advanced federal in  
27 personam litigation may, in some instances, permit an injunction in aid of  
28 jurisdiction” and that this exception often arises in the context of multidistrict

1 litigation cases. *Negrete*, 523 F.3d at 1102, n.16. However, “in less advanced cases,  
2 courts have been more chary about issuing injunctions, as, indeed, they should have  
3 been.” *Id.* at 1102. In distinguishing between advanced and less advanced cases,  
4 courts consider the stage of the litigation, particularly whether settlement or judgment  
5 has been reached. *See id.* at 1102. With respect to the less advanced cases, the Ninth  
6 Circuit noted that where “no settlement had yet been approved by the MDL court, no  
7 provisional settlement was in hand, and no conditional class certification was extant .  
8 . . the state court proceeding was not the kind of interference that could justify an  
9 injunction.” *Id.* at 1102 (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank*  
10 *Prods. Liab. Litig.*, 134 F.3d 133, 137 (3d Cir. 1998)).

11 Here, although Defendants claim that they are “not seeking to enjoin any state-  
12 court lawsuits” [Doc. No. 228-1 at 7], that is precisely what they are asking this court  
13 to do—enjoin Plaintiff Mack from commencing TCPA litigation against Defendants  
14 in *any* other court other than this MDL, including the state court which has thus far  
15 been Plaintiff’s chosen forum. However, no settlement has been reached in this  
16 action, and Defendants do not argue that Plaintiff Mack’s state court filings would  
17 interfere with discovery or global settlement efforts in this matter. Instead,  
18 Defendants appear to argue that without an injunction, the cycle of these cases will  
19 continue, resulting in duplicative motion practice before the JPML. Although it may  
20 well be more convenient and efficient were Plaintiff to file claims for all 113 calls in  
21 in a single, consolidated pleading, the fact that Plaintiff has opted not to do so does  
22 not amount to a proper reason for enjoining a state court proceeding under the Anti-  
23 Injunction Act. *See Negrete*, 523 F.3d at 1101 (“Any time parallel state and federal  
24 actions are proceeding against the same defendant, it is conceivable that occurrences  
25 in the state action will cause delay in the federal action, by provoking motion practice  
26 in federal court regarding the effects of state-court rulings, or simply by diverting the  
27 attention of the defendant. Such a rule [a rule that would allow an injunction to avoid  
28 delay] would in effect create an additional exception to the Anti-Injunction Act for

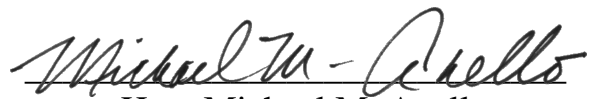
1 circumstances where a federal court finds it *convenient* to enjoin related state  
2 proceedings—an approach contrary to the Supreme Court’s direction that we construe  
3 doubts about the permissibility of an injunction ‘in favor of permitting the state courts  
4 to proceed in an orderly fashion to finally determine the controversy.’”) (emphasis  
5 and brackets in original). Based on the record before the Court as well as the current  
6 procedural posture of this MDL, the Court finds that Defendants have failed to show  
7 that an injunction is appropriate, either in aid of this Court’s jurisdiction or otherwise,  
8 under the All Writs Act and Anti-Injunction Act. Accordingly, the Court **DENIES**  
9 Defendants’ motion to enjoin Plaintiff Mack from filing any other case outside this  
10 MDL.

11 **CONCLUSION**

12 Defendants have not shown proper grounds for an injunction under the All  
13 Writs Act and Anti-Injunction Act, and therefore the Court **DENIES** Defendants’  
14 motion.

15 **IT IS SO ORDERED.**

16  
17 Dated: August 4, 2015



Hon. Michael M. Anello  
United States District Judge